

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YASEEN TRAYNOR A/K/A YASEEN
TRAYLOR, on behalf of himself and all others
similarly situated,

Case: 1:19-cv-6223

Plaintiffs,

ANSWER

-against-

TOBI.COM, LLC

Defendant

DEFENDANT TOBI.COM, LLC, by and through its attorney, ROBERT M. FOX, ESQ.,
answers the complaint as follows:

1. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 1 of the Complaint except admits that plaintiff has asserted claims.
2. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 2 of the Complaint.
3. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 3 of the Complaint.
4. Denies the allegations contained in paragraph 4 of the Complaint.
5. Denies the allegations contained in paragraph 5 of the Complaint.
6. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 6 of the Complaint.
7. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 7 of the Complaint.

8. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 8 of the Complaint.
9. Denies the allegations contained in paragraph 9 of the Complaint.
10. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 10 of the Complaint.
11. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 11 of the Complaint.
12. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 12 of the Complaint.
13. Denies knowledge or information sufficient to form a belief as to the allegations in paragraph 13 except admits that the Defendant is a Delaware Limited Liability Company.
14. Denies the allegations contained in paragraph 14 of the Complaint.
15. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 15 of the Complaint.
16. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 16 of the Complaint.
17. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 17 of the Complaint.
18. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 18 of the Complaint.
19. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 19 of the Complaint.

20. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 20 of the Complaint.
21. Denies the allegations contained in paragraph 21 of the Complaint except admits that Defendant is a clothing and accessories company and tobi.com is a website.
22. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 22 of the Complaint except admits that Defendant's website offers products for online sales.
23. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 23 of the Complaint.
24. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 24 of the Complaint.
25. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 25 of the Complaint.
26. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 26 of the Complaint.
27. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 27 of the Complaint.
28. Denies the allegations contained in paragraph 28 of the Complaint.
29. Denies the allegations contained in paragraph 29 of the Complaint.
30. Denies the allegations contained in paragraph 30 of the Complaint.
31. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 31 of the Complaint.

32. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 32 of the Complaint.
33. Denies the allegations contained in paragraph 33 of the Complaint.
34. Denies the allegations contained in paragraph 34 of the Complaint.
35. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 35 of the Complaint but refers the Court to the language of the statute.
36. Denies the allegations contained in paragraph 36 of the Complaint.
37. Denies the allegations contained in paragraph 37 of the Complaint.
38. Denies knowledge or information sufficient to form a belief as to the allegations in paragraph 38 except admits that Defendant has a website.
39. Denies the allegations contained in paragraph 39 of the Complaint.
40. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 40 of the Complaint.
41. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 41 of the Complaint.
42. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 42 of the Complaint.
43. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 43 of the Complaint.
44. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 44 of the Complaint.
45. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 45 of the Complaint.

46. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 46 of the Complaint.
47. Denies the allegations contained in paragraph 47 of the Complaint.
48. Repeats and realleges paragraphs 1-47 as if same were fully set forth herein.
49. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 49 of the Complaint and refers the Court to the language of the Statute.
50. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 50 of the Complaint and refers the Court to the language of the Statute.
51. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 51 of the Complaint and refers the Court to the terms of the Statute.
52. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 52 of the Complaint and refers the Court to the terms of the Statute.
53. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 53 of the Complaint and refers the Court to the terms of the Statute.
54. Denies the allegations contained in paragraph 54 of the Complaint.
55. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 55 of the Complaint.
56. Repeats and realleges paragraphs 1-55 above as if same fully set forth herein.
57. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 57 of the Complaint and refers the Court to the terms of the Statute.
58. Denies the allegations contained in paragraph 58 of the Complaint.
59. Denies the allegations contained in paragraph 59 of the Complaint.

60. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 60 of the Complaint and refers the Court to the terms of the Statute.
61. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 61 of the Complaint and refers the Court to the terms of the Statute.
62. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 62 of the Complaint and refers the Court to the terms of the Statute.
63. Denies the allegations contained in paragraph 63 of the Complaint.
64. Denies the allegations contained in paragraph 64 of the Complaint.
65. Denies the allegations contained in paragraph 65 of the Complaint.
66. Denies the allegations contained in paragraphs 66 of the Complaint.
67. Denies the allegations contained in paragraph 67 of the Complaint.
68. Denies the allegations contained in paragraph 68 of the Complaint.
69. Denies the allegations contained in paragraph 69 of the Complaint.
70. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 70 of the Complaint and refers the Court to the terms of the Statute.
71. Repeats and realleges the allegations contained in paragraphs 1-70 above as if same were fully set forth herein.
72. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 72 of the Complaint and refers the Court to the terms of the Statute.
73. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 73 of the Complaint and refers the Court to the terms of the Statute.
74. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 74 of the Complaint and refers the Court to the terms of the Statute.

75. Denies the allegations contained in paragraph 75 of the Complaint.
76. Denies the allegations contained in paragraph 76 of the Complaint.
77. Denies the allegations contained in paragraph 77 of the Complaint.
78. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 78 of the Complaint and refers the Court to the terms of the Statute.
79. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 79 of the Complaint and refers the Court to the terms of the Statute.
80. Denies the allegations contained in paragraph 80 of the Complaint.
81. Denies the allegations contained in paragraph 81 of the Complaint.
82. Denies the allegations contained in paragraph 82 of the Complaint.
83. Repeats and realleges the responses contained in paragraphs 1-82 above as if same were fully set forth herein.
84. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 84 of the Complaint and refers the Court to the terms of the Statute.
85. Denies the allegations contained in paragraph 85 of the Complaint.
86. Denies the allegations contained in paragraph 86 of the Complaint.
87. Denies the allegations contained in paragraph 87 of the Complaint.
88. Denies the allegations contained in paragraph 88 of the Complaint.
89. Denies the allegations contained in paragraph 89 of the Complaint.
90. Denies the allegations contained in paragraph 90 of the Complaint.
91. Denies the allegations contained in paragraph 91 of the Complaint.
92. Denies the allegations contained in paragraph 92 of the Complaint.
93. Denies the allegations contained in paragraph 93 of the Complaint.

- 94. Denies the allegations contained in paragraph 94 of the Complaint.
- 95. Denies information or knowledge sufficient to form a belief as to the allegations in paragraph 95 of the Complaint and refers the Court to the terms of the Statute.
- 96. Repeats and realleges the responses contained in paragraphs 1-95 above as if same were fully set forth herein.
- 97. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 97 of the Complaint.
- 98. Denies the allegations contained in paragraph 98 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

- 99. Repeats and realleges the responses contained in paragraphs 1-98 above as if same were fully set forth herein.
- 100. Plaintiff has failed to state claim against Defendant for which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

- 101. Repeats and realleges the responses contained in paragraphs 1-100 above as if same were fully set forth herein.
- 102. Plaintiff seeks causes of action and/or relief which are not provided for and for which he is not entitled to under applicable laws.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

103. Repeats and realleges the responses contained in paragraphs 1-102. above as if same were fully set forth herein.

104. Plaintiff's claims are barred by the doctrine of collateral estoppel, laches, waiver and unclean hands.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

105. Repeats and realleges the responses contained in paragraphs 1-104 above as if same were fully set forth herein

106. The Court lacks subject matter jurisdiction over plaintiff's claims.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

107. Repeats and realleges the responses contained in paragraphs 1-106 above as if same were fully set forth herein.

108. Plaintiff's claims are barred in whole or in part by applicable Statutes of Limitations.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

109. Repeats and realleges the responses contained in paragraphs 1-108 above as if same were fully set forth herein.

110. Plaintiff's claims are preempted by state and federal law.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

111. Repeats and realleges the responses contained in paragraphs 1-110 above as if same were fully set forth herein.

112. A website is not a public accommodation.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

113. Repeats and realleges the responses contained in paragraphs 1-112 above as if same were fully set forth herein.

114. Plaintiff lacks standing to maintain these causes of action, including but not limited to, because he never patronized nor attempted to patronize the website mentioned in the complaint.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

115. Repeats and realleges the responses contained in paragraphs 1-114 above as if same were fully set forth herein.

116. Defendant, at all times, acted reasonably in good faith and without any willful or intentional misconduct.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

117. Repeats and realleges the responses contained in paragraphs 1-116 above as if same were fully set forth herein.

118. Plaintiff has failed to exhaust available administrative remedies.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

119. Repeats and realleges the responses contained in paragraphs 1-118 above as if same were fully set forth herein.

120. Plaintiff lacks standing to seek injunctive relief.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

121. Repeats and realleges the responses contained in paragraphs 1-120 above as if same were fully set forth herein.

122. The removal of any barriers identified by plaintiff would not be readily achievable.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

123. Repeats and realleges the responses contained in paragraphs 1-122 above as if same were fully set forth herein.

124. The removal of any barriers identified by plaintiff would cause undue burden on defendant.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

125. Repeats and realleges the responses contained in paragraphs 1-124 above as if same were fully set forth herein.

126. The removal of any barriers identified by plaintiff would fundamentally alter the business, goods and services of Defendant.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

127. Repeats and realleges the responses contained in paragraphs 1-126 above as if same were fully set forth herein.

128. Defendant adequately provided plaintiff with access to the website tobi.com.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

129. Repeats and realleges the responses contained in paragraphs 1-128 above as if same were fully set forth herein.

130. The claims that plaintiff has asserted in this lawsuit are moot.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

131. Repeats and realleges the responses contained in paragraphs 1-130 above as if same were fully set forth herein.

132. Plaintiff's claims are barred in whole or in part by Plaintiff's failure to mitigate damages.

WHEREFORE it is respectfully requested that this Complaint be dismissed in its entirety with prejudice and that the Defendant Tobi.com, LLC be awarded its reasonable costs and attorneys fees and such other relief as the Court deems just and proper.

Dated: New York, New York
August 1, 2019

s/ Susan Adler

SUSAN ADLER ESQ
LAW OFFICES OF ROBERT M. FOX ESQ
ATTORNEY FOR DEFENDANT
630 Third Avenue
New York, New York 10017
(212) 867-9595

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YASEEN TRAYNOR A/K/A YASEEN
TRAYLOR, on behalf of himself and all others
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TOBI.COM, LLC

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DECLARATION OF SERVICE
OF ANSWER

Susan Adler, declares pursuant to 28 USC section 1746 as follows:

I am not a party to this action. On August 1, 2019, I filed the Defendant's Answer to this Complaint by ECF filing. Service was accomplished on the attorneys listed below electronically through the ECF system.

David Force, Esq
Stein Saks, PLLC
Attorneys for Plaintiff
285 Passaic Street
Hackensack, New Jersey 07601

I declare under perjury that the foregoing is true and correct. Executed on the 1st day of

August, 2019

s/ Susan Adler

Susan Adler